

## Deadly Force

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## Why is this Dark Subject taught

- Purpose of Deadly Force training:
  - to inform you when deadly force is appropriate
  - to prohibit the use of deadly force when it's not
  - Uniformity of:
    - deadly force instruction
    - utilization of deadly force
    - administrative review of the use of deadly force
  - Elimination of uncertainty and confusion

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## Let's Play Football

- Basic Game
  - Field size – You can play anywhere within the lines
  - Run, Punt, Pass, Kick, Lateral, etc.
- Whose Rules
  - NFL, NCAA, Canadian???
- Coach's Rules - He puts his own opinion on how you will play the game

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### Deadly Force Legal Review

- What we are going to discuss:
  - State Law – RCW 9A.16.040
  - Federal law – 471 U.S. 1
  - The legal boundaries for the use of Deadly Force
- What we are NOT going to discuss:
  - Individual Department Policies
  - Morality or Opinions

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### Legal Definitions

- Deadly Force:
  - the intentional application of force through the use of firearms or other means reasonably likely to cause death or serious physical injury RCW 9A.16.010
- Intentional
- Death
- Serious Physical Injury:
  - No legal definition in Washington

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### Legal Definitions cont.

- Deadly Weapon:
  - means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a vehicle as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm. RCW 9A.04.110

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### Legal Definitions cont.

- Substantial Bodily Harm:
  - bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part. RCW 9A.04.110
- Great Bodily Harm:
  - injury which creates a probability of death or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any body part or organ RCW 9A.040.100

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### Legal Definitions cont.

- Necessary:
  - no reasonable effective (safe) alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose RCW 9A.16.100
- Reasonable belief:
  - facts, circumstances, or knowledge present to the officer sufficient to justify a feeling or thought

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### TENNESSEE v. GARNER 471 U.S. 1 (1985)

- Basis for:
  - Federal law
  - WA State law – RCW 9A.16.040
  - Kent PD policy
- Allows for the use of deadly force in two separate and specific instances

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### 1st Prong of Tenn. v. Garner

- Officers are authorized to use deadly force against any person as necessary in self-defense or the defense of another, when they have reason to believe they or another are in immediate danger of death or serious physical harm.
  - Any person
  - Self-defense
  - Reason to believe
  - Immediate danger of serious physical harm

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### 2nd Prong of Tenn. v. Garner

- Officers are authorized to use deadly force to capture or seize a dangerous suspect when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm, and there is no reasonably safe means of preventing the suspect's escape.
  - Capture or seize
  - Probable cause
  - Crime inflicting/threatening serious physical harm
  - No reasonably safe means

**AND**

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### Verbal Warning To CAPTURE Or SEIZE

- When officers are about to use deadly force, they will, when feasible, issue a verbal warning to the suspect.
- Factors:
  - Availability of cover
  - Persons in vicinity at risk
  - Likelihood that subject will surrender
  - Nature of threat posed

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**Assessing the Suspect's Dangerousness**

- The US Supreme Court offered two criteria to assess whether a fleeing suspect is dangerous:
  1. "if the suspect threatens the officer with a weapon" OR
  2. "there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm.."
- Satisfying either of these criteria effectively establishes the presumption that the suspect's escape will continue to endanger the community

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**RCW 9A.16.040 –  
Deadly Force by a Public Officer**

- State law is more inclusive than the Tennessee v. Garner decision:
  - 1(a) covers when you act as a State executioner
  - 1(b) basically is the "fight to the death" section that allows escalation to deadly force to overcome actual resistance to your legal duty

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**RCW 9A.16.040 cont.**

- (1)(c) deals with the officer or his designee:
  - (i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony; or
  - (ii) to prevent escape/retake from federal/state correction facility; or
  - (iii) to prevent escape/retake of a person from a county/city jail/holding if arrested for, charged with, or convicted of a felony; or
  - (iv) to suppress a rioter if armed with a deadly weapon

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### RCW 9A.16.040 cont.

- (2) In considering to whether to use deadly force under (1)(c), to arrest or apprehend any person for the commission of any crime, the officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or others. Among the circumstances which may be considered by officers as a "threat of serious physical harm" are the following:

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### Assessing the Suspect's Dangerousness

- WA State mirrors federal law as follows:
  - (2)(a) The suspect threatens the peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
  - (2)(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

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### US Supreme Court 471 U.S. 1

- 1. self-defense or the defense of another . . . reason to believe they or another in immediate danger of death or serious physical harm.
- 2. to capture or seize a dangerous suspect . . . probable cause to believe the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm, and no reasonably safe means of preventing escape.

### RCW 9A.16

- 9A.16.020 Whenever used by a party about to be injured, or by another lawfully aiding him or her . . . in case the force is not more than necessary.
- RCW 9A.16.040(2) If not apprehended, suspect poses a threat of serious physical harm to the officer or others . . . probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

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**US Supreme Court  
471 U.S. 1**

- 1. "if the suspect threatens the officer with a weapon"

**OR**

- 2. "there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm."

**RCW 9A.16.040**

- (2)(a) The suspect threatens the peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
- (2)(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

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**What IS Reasonable Force**

- Where deadly force is permissible, officers may utilize the amount of force reasonably necessary to eliminate the threat they are facing
- Officers may fire until the subject surrenders, or is incapacitated and no longer poses a threat, or escapes our diligent search

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**Articulation Necessary  
to Justify Use**

- Suspect was likely to cause death or serious physical harm if not controlled,

**and**

- Deadly force was necessary to safely achieve control

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### Sound judgment still required

- Where deadly force is permissible, officers still have the duty to assess whether their use of deadly force creates a danger to the public that outweighs the likely benefit of that use of force
- Warning Shots:
  - These are not a deadly force legal issue, only a policy issue

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### Scenario 1

- Officers approach a residence at night to arrest an armed robbery suspect. The robbery occurred six weeks earlier, and the suspect was armed with a handgun which he used to threaten bank personnel. Two officers go to the front door of the house, and other officers provide cover from assigned positions. One officer gains a view of the lighted interior of the house through an uncurtained window. The officers at the front door knock, and the officer watching through the window sees the suspect approach the door with gun in hand. This is reported to the other officers by radio, and the officers at the front door dive to the side. The suspect opens fire through the door. The officer at the window fires through the glass, and his shots strike the suspect in the back and side, fatally wounding him.

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### Tennessee v. Garner

- 1. self-defense or the defense of another . . . reason to believe they or another in immediate danger of death or serious physical harm.
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### Discussion 1

- The use of deadly force is lawful. The officer was confronted with a suspect who demonstrated dangerousness by being armed and resisting arrest by shooting at fellow officers. Deadly force was necessary to safely control the suspect because of his violent response to the presence of the arresting officers. Because it was essential that the officer eliminate the danger to his fellow officers and himself as quickly as possible, verbal warnings were not practicable.

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### Scenario 2

- A narc is concluding an undercover drug deal in the parking lot of a shopping mall at 3:00 am. He just purchased 3 ounces of cocaine from two suspects. He gives the arrest signal as he and the two suspects are standing outside their vehicles. The arrest team begins to approach in their cars. Alerted by the oncoming cars, the suspects push the narc to the ground, and run for their car. At this point no weapons have been observed or mentioned. As the suspects get in their car, the arrest team cars attempt to block the car in place. The suspects start their car as the officers are leaving theirs. The suspects' car backs into one KPD car which was parked about two feet behind, and rams forward in a car parked in front, moving it a couple of feet. Officers, weapons drawn, identify themselves and scream for the suspects to stop the car. It continues ramming back and forth as officers scramble to stay clear. As the suspects' car continues to smash into the surrounding cars, officers fire at the driver.

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### Tennessee v. Garner

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## Discussion 2

- The officer's use of force was lawful. A suspect using his car to fight his way from custody is reasonably believed to be dangerous based upon his apparent attempt to inflict death or serious bodily injury. In this scenario warnings were given before deadly force was utilized, but the suspects were unwilling to submit to arrest. Thus deadly force was necessary to safely achieve control. Even though the attack with the car was not directed at particular officers, its indiscriminate violent nature is sufficient to justify the use of deadly force.

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## Scenario 3

- Officers approach a residence during the day to arrest an armed robbery suspect. The robbery occurred six weeks earlier, and the suspect was armed with a handgun which he used to threaten bank personnel. Two officers go to the front door of the house, and other officers provide cover from assigned positions. Before officers have fully established a perimeter, the suspect bursts from the back door of the residence, pistol in hand, and runs through the back yard toward adjacent homes. Officers shout, "Stop! Police! Don't move!" The suspect continues to run, gun in hand. As the subject cuts between two nearby houses, a pursuing officer shoots from a distance of fifteen yards, inflicting a fatal wound.

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## Tennessee v. Garner

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### Discussion 3

- The officer's use of force was lawful. The suspect, armed with a handgun, presents a significant danger to pursuing officers since he can turn and fire or seek a position of cover and fire, without allowing the officers time to effectively respond. He also presents a significant danger to any members of the public he might encounter. In the heat of the moment he will likely consider any person in his path an adversary, and he has the instant ability to inflict grave injury. Deadly force is necessary to safely control the suspect since he refuses to submit to arrest, and an officer assumes considerable risk of death or serious injury by pursuing such a suspect and attempting to subdue him using non-deadly alternatives. Of course an officer should always consider the dangers his own use of deadly force will present to other officers and the public. There are times where the stated policy permits the use of deadly force but the use of such force presents an unreasonable danger to the public. Such circumstances are not present in this example.

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### Scenario 4

- A Pro-Act officer, working in an undercover role as a fence, is purchasing explosives and ammunition stolen from a military base. He has arranged to buy from a suspect 100,000 rounds of rifle ammunition for \$5000.00. The suspect arrives at the meeting place, shows the ammunition in the bed of his pickup truck, and asks to see the money. When the officer pulls out the \$5000.00, the suspect pulls a handgun and says, "I'll just take that." The officer hands over the money, and raises his hands, and the suspect backs toward his truck. He is confronted there by the officer's backup team who identify themselves as Police Officers, and order him at gunpoint to drop his gun.. Appearing stunned, the suspect stops but fails to comply with two commands to drop his gun. The suspect continues to point his weapon in the direction of the undercover officer who is slowly moving toward cover. The backup team, behind cover, fires. The dealer collapses, dead.

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### Tennessee v. Garner

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### Discussion 4

- The officers have used deadly force in lawful manner. A suspect, gun in hand, who refuses to quickly comply with a command to disarm himself is reasonably believed to be presenting the officers with a danger of death or serious bodily injury. If the backup officers wait for the suspect to commence firing before the act, their shots will be too late to prevent the death or serious injury of the Pro-Act officer. The officers have given verbal warning, and it has been ignored. They must act to prevent the unreasonable danger that will result from further delay.

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### Scenario 5

- Two detectives approach a check forgery suspect in the break room of the manufacturing plant where the suspect works. The detectives have a warrant for his arrest. As they approach the man, who is of average size and not known to be violent, they announce their identity and tell him he is under arrest. The suspect is wearing slacks and a shirt, and there is no indication that he is armed. When the detectives are within arm's length of the suspect, the man executes a karate kick, striking one of the detectives in the groin, temporarily disabling him. The other detective backs away, drawing his handgun. The suspect, adopting a martial arts fighting stance, feints toward him, striking at his gun. The detective shouts, "Stop or I'll shoot." The subject again lunges for the detective and the detective fires.

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### Tennessee v. Garner

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### Discussion 5

- The detective used deadly force in a lawful manner. Based upon the suspect's skilled successful attack that has disabled his partner, and the suspect's attempt to gain control of the detective's handgun, the detective reasonably believes that he is in danger of death or serious bodily injury. Deadly force is necessary to safely control the suspect since he is violently resisting arrest. It should be noted that the shooting of an unarmed subject may generate controversy. An officer in such a circumstance must be prepared to articulate the facts that caused him to conclude his life or the lives of others was in danger, and that non-deadly means were not likely to safely control the suspect. Relevant considerations would include the suspect's size in relation to the officer, indications that the suspect might be irrational as a result of mental illness or use of intoxicants or stimulants, the suspect's known or demonstrated exceptional physical condition. The officer must actually demonstrate that it was likely that he would be overpowered and seriously injured or killed, except for his use of deadly force. Obviously, where an officer is under unarmed attack by several suspects, this likelihood is substantially greater.

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### Scenario 6

- Two detectives approach a check forgery suspect in the break room of the manufacturing plant where the suspect works. The detectives have a warrant for his arrest. As they approach the man, who is of average size and not known to be violent, they announce their identity and tell him he is under arrest. The suspect is wearing slacks and a shirt, and there is no indication that he is armed. When the detectives are within arm's length of the suspect, the man screams that he is not going. He spits in the face of one of the detectives, and grabs a support column, wrapping it with his arms and legs. The detectives unsuccessfully try to peel the man away from the column, during which attempt he is cursing them and spitting. One detective draws his handgun and informs the suspect that if he doesn't let go of the column and surrender by the count of ten, he will be shot. The suspect continues cursing the detectives. At the count of ten the detective fires.

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### Tennessee v. Garner

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### Discussion 6

- This officer has not used force in a lawful manner. He does not have a reasonable belief that he or others were in danger of death or serious injury. The suspect certainly behaved bizarrely. He might attack the officers at any moment. Nonetheless, there are insufficient facts to indicate that he will probably injure or kill the officers. Policy requires under these circumstances that the officers explore non-deadly options to resolve the situation.

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### Scenario 7

- Two Pro-Act officers go to the residence of the ex-wife of a fugitive, hoping to interview the woman about her former spouse's present address. The fugitive jumped bail rather than face trial for distribution of cocaine. As the officers approach the house from the street, the fugitive emerges from the front door, sees the officers and draws a handgun. The officers take cover behind cars parked at the curb, drawing their guns and calling, "Police. Don't move!" The fugitive opens fire, and rounds smash into the parked cars. One officer manages to return fire, but does not hit the fugitive who is now running away. Turning the corner around the side of the house, the fugitive trips over a bicycle and is seen to lose his gun which flies into a thick shrub. Regaining his feet, he runs along the driveway toward the back yard, but confronts a six-foot high chain link fence in his path. He is climbing the fence when one of the officers again yells for him to stop. The fugitive continues his climb and the officer fires again, from a distance of fifteen feet, and the fugitive falls.

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### Tennessee v. Garner

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### Discussion 7

- These officers have used deadly force in a lawful manner. Officers are authorized to use deadly force if necessary to safely achieve control of the fugitive described in this scenario, rather than allowing him to flee the scene. The fugitive has clearly demonstrated his dangerousness by engaging officers in a gun battle rather than surrender to their lawful authority. The only issue that the officers then need decide is whether deadly force is necessary to safely achieve control of the fugitive should he fail to comply with their commands. It is unreasonable to expect officers, who must be concerned with retaining control of their weapons, to wrestle into submission the man who just tried to kill them and who is attempting to avoid capture by any means available. It is equally unreasonable to expect officers to allow the fugitive to depart the scene so that he may re-arm himself in preparation for his next violent encounter with law enforcement officers. Therefore unless the fugitive stops in response to verbal commands, policy permits deadly force to achieve his control. In the scenario, the officer warns the fugitive a second time. This is commendable, if time allows, since surrender is the preferred resolution.

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### Scenario 8

- Two Pro-Act officers go to the residence of the ex-wife of a fugitive, hoping to interview the woman about her former spouse's present address. The fugitive jumped bail rather than face trial for distribution of cocaine. As the officers approach the house from the street, the fugitive emerges from the front door, sees the officers and draws a handgun. The officers take cover behind cars parked at the curb, drawing their guns and calling, "Police! Don't move!" The fugitive opens fire, and rounds smash into the parked cars. One officer falls to the pavement, blinded by broken glass. The other manages to return fire, but does not hit the fugitive who is now running. This officer takes a few steps in pursuit and falls, having been wounded in the thigh. Turning the corner around the side of the house, the fugitive trips over bicycle and is seen to lose his gun which flies into a thick shrub. Regaining his feet, he runs along the driveway toward the back yard, but confronts a six-foot high chain link fence in his path. He is climbing the fence when the officer who has been shot fires again, from a distance of thirty feet, and the fugitive falls.

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### Tennessee v. Garner

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### Discussion 8

- The officer has used deadly force in a lawful manner. Because the fugitive has proven his dangerousness, and because he will escape unless deadly force is used, the officer is in compliance with Policy even though he has no facts to indicate the suspect is armed at the time he is shot. Clearly the fugitive has proven his dangerousness by his violent resistance of arrest. Any law enforcement officer who approaches the fugitive will likely face the same violent resistance that the officers have encountered. Since the suspect refuses to submit to arrest, deadly force is necessary to safely achieve his control.

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### Scenario 9

- Early on a Sunday morning an officer looks out his apartment window and sees two young men breaking into a car on the street. He tells his wife to call 911, grabs his gun, discreetly leaves the building, and approaches the suspects. The street is otherwise deserted. Taking cover behind a nearby car, the officer draws his weapon, identifies himself, and orders the two men to lie down on the street. One complies, but the other stands up and begins to flank the officer, taunting him, and exhorting his partner to get up. Both are apparently unarmed. As the man on the ground begins to get up, the officer tells them to stop or he will shoot. The men fail to comply, and continue their approach. When one man is within twenty feet, the officer again tells them to stop, and as their approach continues fires a shot into the asphalt pavement between him and the closer man. Both men turn and run away.

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### Tennessee v. Garner

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### Discussion 9

- The officer has used force in a lawful manner. Despite the officer's reasonable belief the he was in danger of death or serious bodily injury from what appeared to be an imminent physical attack by the two suspects, his use of force in firing a warning shot may have violated policy. Even though the street was otherwise deserted and the officer placed his shot where it would pose no obvious risk to others, a prohibition of warning shots has no exception. The officer must choose to rely on verbal warnings or to use deadly force against his assailants

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### Scenario 10

- Two officers have probable cause to arrest a suspect for a residential burglary. Unable to locate the suspect at his apartment, they go to a nearby garage where he works as an auto mechanic. The officers approach the suspect, identify themselves, and tell him that he is under arrest. The suspect glares at the officers for a moment and then suddenly hurls a wrench at them, which they manage to dodge. The suspect then removes a small canister from a nearby bench and shouts: "If you guys don't get out of my way, I'll mace you!" The officers hold their positions about 30 feet from the suspect, draw their handguns, and order the suspect to drop the canister. The suspect does not comply with the command, but continues to point the canister in the officers' direction as he moves toward them. When the suspect is within about 20 feet of the officers, they both fire, striking the suspect in the chest.

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### Tennessee v. Garner

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### Discussion 10

- These officers used deadly force in a lawful manner. Although there is no probable cause to believe the suspect previously committed a crime involving the infliction or threatened infliction of death or serious physical injury, he is posing an imminent danger to the officers by his violent resistance to arrest with what appears to be a chemical agent.
- A noncompliant suspect who has the capability of rendering officers incapable of defending themselves also has the capacity to gain access to the officers' weapons and to kill or seriously injure them. The officers commanded the suspect to drop the canister and surrender; he refused to do so and increased the danger to the officers by advancing toward them in a threatening manner. There is no safe alternative to the use of deadly force to avert the danger. The officers are not required to retreat from their duty, or to permit the suspect to get close enough to use what is believed to be an incapacitate against them.

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### Scenario 11

- Two officers have probable cause to arrest a suspect for check forgery and forged prescriptions. As they approach his residence to make the arrest, they observe a man matching the suspect's description standing on the front porch. When the officers are within about 20 yards of the residence, the man looks in their direction and immediately jumps from the porch and runs down the sidewalk away from them. One of the officers shouts, "Police! Stop!" When the man ignores that command, the officer shouts a second time, "Police! Stop or I'll shoot!" The suspect continues running, increasing the distance between himself and the pursuing officers. Realizing that they are not going to be able to overtake the fleeing suspect, the officer fires a shot, striking the suspect in the back.

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### Tennessee v. Garner

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### Discussion 11

- This officer has violated the lawful use of force. There can be no necessity to use deadly force if there is no imminent danger. There is no probable cause to believe that the suspect poses an imminent danger to the officers or to others. His offense did not involve the infliction or threatened infliction of death or serious bodily injury, nor is there probable cause to believe that the suspect poses an imminent danger to the officers or others. If the officers are unable to seize the suspect without resorting to deadly force, the suspect will avoid arrest for the time being.

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### Scenario 12

- Two detectives possess a warrant to arrest a suspect for armed robbery of a super market the previous day. During the robbery, the suspect shot and wounded a cashier. As the detectives drive into the neighborhood where they believe the suspect previously resided, they observe a man matching the suspect's description walking down the sidewalk. From a distance of about 25 yards, the detectives see what appears to be a handgun tucked in the waistband of the suspect's trousers. Getting out of their car, the detectives walk toward the suspect. When they are about 10 yards from the suspect, one of the detectives shouts, "Police! Don't move! You are under arrest!" Following a quick glance in the direction of the detectives, the suspect turns and runs away from the detectives and toward a nearby house. The detective again shouts, "Police! Stop or I'll shoot!" When the suspect continues to run, the detective fires one shot, striking the suspect in the back..

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### Tennessee v. Garner

- 1. self-defense or the defense of another . . . reason to believe they or another in immediate danger of death or serious physical harm.
- 2. to capture or seize a dangerous suspect . . . probable cause to believe the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm, and no reasonably safe means of preventing escape.

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## Discussion 12

- The detective used deadly force in a lawful. The detectives have probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious physical injury and probable cause to believe the suspect is presently armed with a firearm.. If the suspect reaches the house under these circumstances, he will have the tactical advantage of cover, whereas the detectives are in an exposed position. In addition, the suspect poses a danger to other persons in the house whom he may take as hostages. The nature and imminence of the danger permits the use of deadly force under these circumstances. Because permitting the suspect to enter the house would place the detectives and others in imminent danger, and because there is no safe alternative available to forestall that action, deadly force is permitted

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## Conclusion

- Purpose of Deadly Force training:
  - to inform you when deadly force is appropriate
  - to prohibit the use of deadly force when it's not
  - Uniformity of:
    - deadly force instruction
    - utilization of deadly force
    - administrative review of the use of deadly force
  - Elimination of uncertainty and confusion

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